

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 188 CUTTACK, TUESDAY, FEBRUARY 6, 2007 / MAGHA 17, 1928

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 11th December 2006

No. 10953—li/1(S-1)-1/2003-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th October 2006 in Industrial Disputes Case No. 54 of 2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the management of (1) M/s Sarabhai Piramal Pharmaceuticals Pvt. Ltd. represented by the Vice-President (Marketing & Sales), M/s Sarabhai Piramal Pharmaceuticals (Ethical Division), Dr. Vikram Sarabhai Marg, Vadodara-390023, (2) Divisional Sales Manager (Ethical Division), C/o M/s Sarabhai Piramal Pharmaceuticals Pvt. Ltd., 194-Jessore Road, Lake Town, Kolkata-700087 and its workman Shri Satish Chandra Pujhari, At Kamal Nivas, P. O. Jharuapara, Sambalpur was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 54 OF 2003

Dated the 12th October 2006

Present :

Shri P. K. Mahapatro, LL. B.
Presiding Officer, Labour Court
Sambalpur.

Between :

The Management of M/s Sarabhai
Piramal Pharmaceuticals Pvt. Ltd.
represented by

.. First Party—Management

1. The Vice-President (Marketing & Sales)
M/s Sarabhai Piramal Pharmaceuticals Ltd.
(Ethical Division), Dr. Vikram Sarabhai Marg
Vadodara-390023.

2. Divisional Sales Manager (Ethical Division)
C/o Sarabhai Piramal Pharmaceuticals
Pvt. Ltd., 194-Jessore Road, Lake Town
Kolkata-700087.

And

Its Workman	..	Second Party—Workman
Shri Satish Chandra Pujhari		
At Kamal Nivas, P. O. Jharuapara		
P. S. Town, Dist. Sambalpur.		

Appearances :

For the First Party—Management	..	Shri O. N. Purohit, Advocate
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For the Second Party—Workman	..	Shri P. K. Tripathy and another

AWARD

1. This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 and 12 of the Industrial Disputes Act, 1947 for adjudication of the reference vide Memo No. 9671(6)-L.E., dated the 1st October 2003 Scheduled below :

“Whether the dismissal of Shri S. C. Pujhari, Professional Sales Representative with effect from the 28th June 2001 by the management of M/s Sarabhai Piramal Pharmaceuticals Private Ltd. is legal and/or justified ? If not, what relief he is entitled to ?”

2. In this Industrial Disputes Case, the dispute between the parties revolves in a narrow campus. According to the workman, he was inducted as a Professional Sales Representative by the management on the 10th March 1976 and then he was confirmed on the 1st April 1977 and he was performing his duties to the entire satisfaction of his superiors. But as ill-luck would have it, without any rhyme and reason he was dismissed from service on the 28th June 2001. He has further added in his statement of claim that the steps taken by the management in this regard is far from satisfactory and reasonable opportunity of being heard was also not given to him to ventilate his grievances prior to the above order. He has also come up with the plea that being aggrieved by such illegal action he had moved the Labour Department and the conciliation effort taken by the Department had also failed. Then the matter was moved to the Government and thereafter it is referred to this Court for adjudication.

3. The management side in their cryptic written statement have challenged the above stand of the workman. Their main plea is that the workman is not a ‘workman’ as a result, he is not entitled to get the benefits claimed by him.

4. By taking note of the pleadings of the parties, the following issues have been framed in this case for adjudication :—

ISSUES

- (i) “Whether the second party is a ‘workman’ as defined in the Industrial Disputes Act, 1947 ?
- (ii) Whether the dismissal of Shri S. C. Pujhari, Professional Sales Representative with effect from the 28th June 2001 by the management of M/s Sarabhai Piramal Pharmaceuticals Private Ltd. is legal and/or justified ?
- (ii) To what relief, the workman is entitled ?”

5. During the course of hearing, the workman is figured as the only witness from his side and the management side has not examined any witness to substantiate the above plea. In view of the above position what emerges is that the workman on oath has claimed that the order of dismissal passed by the management is illegal and contrary to law whereas the management side without adducing any evidence has pleaded that the case of the workman in the form presented by him squarely indicates that he is not a ‘workman’ within the sweep of the Industrial Disputes Act. So the merit of the plea taken by the management is to be judged by keeping in view that there is no oral evidence from their side to substantiate that the workman can not be treated as such under the length and breadth of the Industrial Disputes Act.

FINDINGS

6. *Issue Nos. (i), (ii), and (iii)*—In his evidence the workman has stated that the order of dismissal passed by the management is illegal and the allegation levelled against him are not based on sound data. He was cross-examined by the learned counsel of the management to a very very limited extent. It is only suggested to the workman that he can not be treated as such under the Industrial Disputes Act, nothing is asked regarding the factual aspect. In view of the above position, if it is found that the present workman is a ‘workman’ within the sweep of the Industrial Disputes Act, then there is no difficulty in answering the above issues in his favour. I have arrived into such a conclusion as because there is absolutely no rebuttal evidence from the side of the management to disown the other factual accepts stated by the workman. To add to this, even there is no evidence on oath from the side of the management to substantiate their plea. I will now scrutinise as to whether the present workman can be treated as such within the length and breadth of the Industrial Disputes Act.

7. The learned counsel for the parties have relied on AIR 1994 S. C. 2608 (H. R. Adyanthaya, etc. etc. V. Sandoz (India) Ltd., etc. etc.) to buttress their respective claim. In addition to the above case law the workman has also relied on Vol. 1997 Labour Law Journal R. D. Bhanot. And The P. O. L. C., Ludhiana and others to substantiate his plea. On perusal of

the judicial pronouncements as referred above what emerges is that the definition of 'Sales Promotion Employees' as defined under Sales Promotion Employees (Conditions of Service) Act, 1976 (hereinafter referred to as '1976 Act') shows that if any person employed or engaged in any establishment for hire or reward to do any work relating to the Promotion of Sales or business or both is included within the ambit of it and for them the provisions of Industrial Disputes Act as in force for the time being shall apply. In the above referred '1976 Act' those who are engaged in Supervisory capacity drawing wages exceeding Rs. 1,600 per month are excluded from this definition. But in the case at hand there is no whisper of word from the side of the management that the above referred requirements to exclude them from the length and breadth of the beneficial provision are available against the present workman. So on a plain reading of the provision of the Industrial Disputes Act and '1976 Act' it is quite clear that even though employees engaged in the promotion of sales of business may not fall within the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, but they can be treated as such by virtue of the deeming clause available in Section 6(2) of '1976 Act'. So there is no difficulty in holding that the present workman is a 'workman' by virtue of the above deeming provision.

8. In a civil trial if no evidence is led from the side of the defendant challenging the plea propounded by the plaintiff then it can be safely said that the evidence of the plaintiff goes unchallenged. In the case at hand there is no evidence challenging the above plea and oral evidence adduced by the workman. The technical ground that he is not a 'workman' which is raised by the learned counsel of the management can not be accepted in view of the discussion made above. As such, there are good grounds to treat the workman as a 'workman' in view of deeming clause and the benefits of the same are to be extended to him. It is the case of the workman that while removing him, the management side has not observed the minimum formality and even the minimum statutory benefits were not extended to him. This is unchallenged in nature. As per law, such removal from service is to be treated as nonest. So he is entitled to get the relief claimed by him. As such, the workman is to be reinstated in service.

9. Now coming to the financial benefits to be extended to the workman it can be safely said that normally back wages must follow reinstatement. But the quantum of back wages is normally the discretion of the adjudicator. The Apex Court in a catena of decisions have held that on reinstatement, the workman is entitled for full back wages since the order of termination is nonest. It is also observed in some judicial pronouncements that the Industrial Courts may slice off a part of it. Admittedly in this case the workman in his examination-in-chief has not whispered a word that during the interim period he was not gainfully employed anywhere. In order to get the back wages, he has to come up with a clear case that he is lying vacant right from the date of dismissal till now. What is surprising is that the objecting party (the management) has also not adduced any evidence that he was employed anywhere during the above period. However, keeping in view the facts and circumstances of this case, I feel it

proper to scale down the back wages to a consolidated amount of Rs. 50,000 (Rupees fifty thousand) only which is to be paid within a period of two months hence. In a summary proceeding like the present one, the compensation claimed by the workman can not be granted by this Court and the workman is at liberty to approach the Civil Court for getting that relief. Hence the following award :—

AWARD

The reference is answered on contest in support of the workman and against the management. The order of dismissal passed by the management with effect from the 28th June 2001 is illegal and he is entitled to be reinstated in service. The financial benefit is limited to Rs. 50,000 (Rupees fifty thousand) only as per the discussion made above and it is to be paid within two months hence. The management is directed to reinstate the workman within two months hence. The prayer for payment of compensation stands rejected.

Dictated and corrected by me.

P. K. MAHAPATRO
12-10-2006
Presiding Officer
Labour Court, Sambalpur

P. K. MAHAPATRO
12-10-2006
Presiding Officer
Labour Court, Sambalpur

By order of the Governor
N. C. RAY
Under-Secretary to Government